

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
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CHAPTER 179

HOUSE BILL 2088

AN ACT

AMENDING SECTIONS 49-218, 49-218.01 AND 49-218.02, ARIZONA REVISED STATUTES;
RELATING TO THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-218, Arizona Revised Statutes, is amended to
3 read:

4 49-218. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CERCLA brownfields cleanup revolving loan fund program" means the
7 program established by the environmental protection agency pursuant to the
8 ~~Brownfields economic redevelopment initiative~~ to provide loan FINANCIAL
9 assistance IN THE FORM OF LOANS OR GRANTS to eligible persons to remediate
10 contamination at eligible sites as provided in section 104(d)(1)(K) of
11 CERCLA, ~~40 CFR parts 31, 35 and 300~~ and applicable guidance documents
12 prepared by the environmental protection agency to implement this program.

13 2. "Eligible activities" means ~~nontime critical removals~~ REMOVAL as
14 defined by section 101(23) of CERCLA and ~~include~~ INCLUDES required
15 engineering evaluations, cost analysis of cleanup alternatives, public
16 participation requirements and reasonable and necessary site monitoring
17 activities during the remediation.

18 3. "Eligible borrower PERSON" means a person ~~accepted into the~~
19 ~~department's voluntary remediation program except as otherwise provided in~~
20 ~~section 49-218.01 WHO IS ELIGIBLE TO RECEIVE A LOAN OR GRANT UNDER THE CERCLA~~
21 ~~BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM.~~

22 4. "Eligible site" means a site that ~~has been accepted into~~
23 ~~the department's voluntary remediation program and IS A BROWNFIELDS SITE AS~~
24 ~~DEFINED BY SECTION 101(39) OF CERCLA, that is within an area designated in~~
25 ~~a cooperative agreement between the department and the environmental~~
26 ~~protection agency and that is either ONE OF THE FOLLOWING:~~

27 ~~(a) A site that has been determined by the department to have an~~
28 ~~actual release or substantial threat of a release of a hazardous substance.~~

29 ~~(b) A site that has been determined by the department to have an~~
30 ~~actual release or substantial threat of a release of a pollutant or~~
31 ~~contaminant that may present an imminent and substantial danger to the public~~
32 ~~health or welfare.~~

33 (a) ACCEPTED INTO THE DEPARTMENT'S VOLUNTARY REMEDIATION PROGRAM.

34 (b) SUBJECT TO A REMEDIATION AGREEMENT WITH THE DEPARTMENT'S WATER
35 QUALITY ASSURANCE REVOLVING FUND PROGRAM.

36 (c) BEING ADDRESSED BY A REMEDIATION SPECIALIST WHO IS CERTIFIED BY
37 THE BOARD OF TECHNICAL REGISTRATION PURSUANT TO SECTION 32-131.

38 (d) BEING ADDRESSED THROUGH ANOTHER PROGRAM OR OVERSIGHT MECHANISM
39 THAT IS APPROVED BY THE DEPARTMENT.

1 Sec. 2. Section 49-218.01, Arizona Revised Statutes, is amended to
2 read:

3 49-218.01. Brownfields cleanup revolving loan fund program;
4 eligibility

5 A. ~~Subject to the discretion of the director, the department may~~
6 ~~implement a Brownfields cleanup revolving loan fund program. If implemented~~
7 ~~pursuant to a cooperative agreement with the environmental protection agency,~~
8 The director shall implement the brownfields cleanup revolving loan fund
9 program pursuant to the requirements of the CERCLA brownfields cleanup
10 revolving LOAN fund program.

11 B. The director may:

12 1. Enter into ~~loan~~ FINANCIAL ASSISTANCE agreements, as deemed
13 appropriate, with eligible borrowers PERSONS for the performance of eligible
14 activities at eligible sites.

15 2. Apply for, accept and administer grants and other financial
16 assistance from the federal government and from other public and private
17 sources for the brownfields cleanup revolving loan fund program.

18 3. Enter into agreements to administer the program.

19 4. Enter into agreements with the water infrastructure finance
20 authority pursuant to section 49-1203 to perform any of the functions of the
21 fund manager pursuant to the CERCLA brownfields cleanup revolving loan fund
22 program.

23 5. Assess fees to administer the BROWNFIELDS CLEANUP REVOLVING LOAN
24 FUND program consistent with any cooperative agreement with the environmental
25 protection agency.

26 C. ~~loan recipients~~ FINANCIAL ASSISTANCE MONIES shall BE USED TO
27 perform removal actions that meet the requirements of the ~~voluntary~~
28 ~~remediation program, the national contingency plan~~ APPLICABLE PROGRAM OR
29 OVERSIGHT MECHANISM, the CERCLA brownfields cleanup revolving loan fund
30 program and this article. To the extent possible, the department shall
31 eliminate duplicative requirements among the programs.

32 D. The following are not eligible for the BROWNFIELDS CLEANUP
33 REVOLVING LOAN FUND program:

34 1. A site listed or proposed for listing on the national priorities
35 list.

36 ~~2. A site at which a removal action must be taken within six months~~
37 ~~of receipt of the loan application.~~

38 ~~3. 2. A site where a federal or state agency is planning or~~
39 ~~conducting a response or enforcement action~~ THAT IS SUBJECT TO STATE OR
40 FEDERAL UNILATERAL ADMINISTRATIVE ORDERS, A COURT ORDER, ADMINISTRATIVE
41 ORDERS ON CONSENT OR A JUDICIAL CONSENT DECREE ISSUED TO OR ENTERED INTO BY
42 PARTIES UNDER CERCLA OR THIS TITLE.

43 ~~4. A site which has been terminated from or has not been accepted into~~
44 ~~the department's voluntary remediation program.~~

1 3. A SITE THAT IS SUBJECT TO THE JURISDICTION, CUSTODY OR CONTROL OF
2 THE UNITED STATES GOVERNMENT.

3 ~~E. Brownfields cleanup revolving loan fund monies may be loaned to a~~
4 ~~person who is an owner or operator of an eligible site to be remediated only~~
5 ~~if the department can determine that the owner or operator would fall under~~
6 ~~a statutory exemption from CERCLA liability or that the environmental~~
7 ~~protection agency would use its enforcement discretion and not pursue the~~
8 ~~owner or operator under CERCLA as allowed under the applicable environmental~~
9 ~~protection agency guidance. The initial findings made by the department do~~
10 ~~not limit the authority of the federal government or the department.~~

11 ~~F. Brownfields cleanup revolving loan fund monies shall not be loaned~~
12 ~~to a person who is a generator or transporter of contamination at the site~~
13 ~~subject to the loan request.~~

14 ~~G. E. The director, through the attorney general, may take actions~~
15 ~~necessary to enforce the loan contract and achieve repayment of loans~~
16 ~~provided under this article.~~

17 ~~H. The program established by this article ends on July 1, 2009~~
18 ~~pursuant to section 41-3102.~~

19 Sec. 3. Section 49-218.02, Arizona Revised Statutes, is amended to
20 read:

21 49-218.02. Brownfields cleanup revolving loan fund

22 A. The brownfields cleanup revolving loan fund is established to be
23 administered by the director. The fund consists of monies from the following
24 sources:

- 25 1. Monies appropriated by the legislature.
- 26 2. Monies received from the federal government.
- 27 3. Monies received from loan recipients and loan repayments, interest
- 28 and penalties.
- 29 4. Interest and other income received from investing monies in the
- 30 fund.
- 31 5. Gifts, grants and donations received from any public or private
- 32 source.

33 B. Monies in the fund may be used for the purposes provided in section
34 49-218.01. , except that monies shall not be used for any of the following
35 purposes:

- 36 1. ~~To conduct environmental response activities preliminary to~~
37 ~~remediation including site assessment, site identification and site~~
38 ~~characterization.~~
- 39 2. ~~To clean up products that are part of a building structure.~~
- 40 3. ~~To clean up sites contaminated with petroleum products unless they~~
41 ~~are believed to be commingled with a hazardous substance, pollutant or~~
42 ~~contaminant.~~
- 43 4. ~~To perform development or other activities that are not removal~~
44 ~~actions.~~

1 C. The department may use monies in the fund for the department's
2 costs in administering this THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND
3 program.

4 D. Disbursement of monies from the fund pursuant to a ~~loan~~ FINANCIAL
5 ASSISTANCE agreement under this article is not subject to title 41,
6 chapter 23.

7 E. Monies in the fund are continuously appropriated and are exempt
8 from the provisions of section 35-190, relating to lapsing of appropriations.

9 Sec. 4. Emergency

10 This act is an emergency measure that is necessary to preserve the
11 public peace, health or safety and is operative immediately as provided by
12 law.

APPROVED BY THE GOVERNOR MAY 3, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 3, 2004.